

FRONTLINE

Report

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97% of agencies report traffic stops

LAW ENFORCEMENT in Missouri leads the nation in addressing the issue of racial profiling, Attorney General Jay Nixon said June 1, the date he released the first state report of traffic stops in Missouri. Only 10 other states have legislation dealing with racial profiling and only one other, Rhode Island, requires statewide collection of data.

The Missouri law went into effect Aug. 28, 2000, and requires the Attorney General to compile and analyze data from all law enforcement.

Nixon reported that 634 agencies responded, representing more than 97 percent of all agencies. Agencies reported 453,189 stops over a four-month period, resulting in 31,906 searches and 23,716 arrests.

The data show a disproportionate



" This is a law with new duties and because we are leading the nation, we are operating without a blueprint. I am proud that law enforcement responded in a professional manner even though there was no additional funding for this new task. "

Attorney General Jay Nixon

number of stops of African Americans, as well as a disproportionate number of searches of African Americans and Hispanics. Statewide data show

African Americans were stopped at a rate 27 percent higher than expected based on their proportion of the population. When compared to whites, they were 1.3 times as likely as whites to be stopped and 1.7 times as likely to be searched. Hispanics were about as likely as whites to be stopped but were twice as likely as whites to be searched when stopped.

Nixon said a disproportion in stops does not necessarily mean there is racial profiling, as there are many important considerations that will affect data. Those include increased policing in high-crime areas, and the presence of interstate highways, large shopping centers and major employers,

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.08 limit takes effect Sept. 29

THE GOVERNOR on June 12 signed into law HBs 302 & 38, which reduces the blood alcohol content limit to .08. The "Straight .08" bill, which passed with wide bipartisan support, takes effect Sept. 29.

"The overwhelming support of law enforcement as well as MADD and other community groups was essential in getting this bill passed," said Attorney General Jay Nixon. "Thank you."

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Phaedra Marriott, a MADD volunteer, spoke during a .08 rally of law enforcement at the Capitol. She was partially paralyzed from surgery following a crash with a driver who had a .08 BAC.



Jake's Law signed; bill to limit meth-making drugs to governor: Page 3

Governor signs forfeiture bill

THE GOVERNOR on May 17 signed SBs 5 & 21 to require seizures transferred to the federal government be approved by the local prosecutor and circuit judge.

This measure defines "seizure" as any point at which a law enforcement

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FORFEITURE BILL

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legal advice on law impact

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officer discovers and exercises control over property that the officer has reason to believe may be associated with criminal activity.

The bill also defines "seizing agency" as the agency that is the primary employer of the officer or agent seizing the property, including any agency in which one or more employees acting on behalf of the seizing agency is employed by the state or any political subdivision of this state.

THE BILL ALSO:

- **Restricts the disposal** of seized property unless a Criminal Activity Forfeiture Act (CAFA) proceeding involving the property does not result in a judgment of forfeiture.

- **Requires the state auditor** to make an annual report to the General Assembly compiling the statewide seizure information for the previous calendar year.

- **Limits the prosecutor and judge** from approving the transfer of a forfeiture to the feds unless it reasonably appears that the activity giving rise to the forfeiture involves more than one state or unless it is reasonably likely to result in federal criminal charges being filed, based on a written statement of intent to prosecute from the U.S. Attorney with jurisdiction.

Any agency that intentionally or knowingly fails to report its seizures to the local prosecutor or Attorney

General commits a class A misdemeanor, punishable by a fine of up to \$1,000. The report must include date, time and place of seizure, what was seized, estimated value, owners of seized property, criminal charges filed, and disposition of the seizure, forfeiture and criminal actions.

Any agency that intentionally or knowingly fails to acquire an independent audit for any seizures shared with the federal system commits a Class A misdemeanor, punishable by a fine of up to \$1,000.

Because of these significant law changes, each agency should get advice from its local counsel to determine how these changes will impact its procedure.

.08 LIMIT

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Missouri joins 28 other states that have passed a .08 measure and are in compliance with federal law. Had Missouri failed to comply by 2003, federal highway monies would have been withheld.

Besides reducing the BAC to .08 for both administrative and criminal proceedings, the bill:

- Authorizes any certified peace

officer to administer portable breathalyzer tests (PBTs).

- **Increases the minimum sentence** for repeat DWI offenders to five days' imprisonment for prior offenders and to 10 days for persistent offenders unless those offenders perform community service as a condition of probation or parole.

- **Mandates completion** of a substance abuse traffic offender program.

(SATOP) for drivers who have a BAC of 0.15 or greater.

- **Creates a Spinal Cord Injury Fund** to be funded with \$25 paid by each offender convicted of an intoxication-related offense.

- **Tightens ignition interlock requirements** for drivers convicted of second or subsequent intoxication-related offenses.



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LEGISLATIVE UPDATE

Jake's Law OK'd, signed

HBs 144 & 46, which would require a law enforcement agency to check whether any prisoner or arrestee has an outstanding warrant before being released, was signed by the governor on June 1.

Sponsored by Rep. Dennis Bonner of Independence, the legislation would impose a criminal penalty (class A misdemeanor) on any official who purposely fails to conduct the outstanding warrant check.

The bill also includes HB 46, sponsored by Rep. Randall Relford of Cameron. The measure would increase the penalty for aiding the escape of a prisoner to a class B felony. It now is a class D felony.

Limits placed on over-the-counter drugs used to make meth

STATE LEGISLATORS

unanimously passed bills that will make it tougher for meth manufacturers to obtain ingredients, most of which are sold over the counter.

HB 471 and SBs 89 & 37 identify "precursor" drugs and the amount that can be sold over the counter.

Missourians cannot buy at one time more than three packages, three blister packs or 3 grams per package of the drugs. The most common over-the-counter precursor drugs are ephedrine and pseudoephedrine, which are used in allergy medications.

If signed by the governor, the bills also would make it a felony for those caught stealing liquid nitrogen or anhydrous ammonia from a tank, or possessing the substances in a non-

approved container. Anhydrous ammonia, an agricultural fertilizer, is used to make meth.

Other bill provisions would:

- Require a landlord or seller of property who knows meth was produced on the property to disclose this information in writing to the tenant or buyer.
- Add ecstasy to the drug trafficking section. More than 30 but less than 90 grams is a class A felony. More than 90 grams is a class A felony without the possibility of probation or parole.
- Add GHB (date-rape drug) to the list of schedule I controlled substances.
- Add ketamine (date-rape drug) to the list of schedule III controlled substances.

High Tech Unit hosting first regional conference, presenting at deputy sheriff convention

THE AG's HIGH TECH and Computer Crime Unit will be hosting its first regional training conference in July in Jefferson City as well as making presentations at the annual convention of the Missouri Deputy Sheriffs' Association.

● **July 17-18, Jefferson City:** The High Tech Unit is hosting a regional conference to train law enforcement on issues such as electronic investigation and evidence collection, uncovering Internet fraud and understanding technology.

The two-day conference, open to all law enforcement, is being held in cooperation with the Missouri Sheriff's Association and Missouri Deputy Sheriffs' Association.

A schedule will be disseminated later in

Front Line or a letter. For more information, call high tech director Dale Youngs at 816-889-5000.

● **Sept. 24-26, Lake of the Ozarks:** The unit is making two presentations at the 14th annual Training Seminar and Convention of the Missouri Deputy Sheriffs' Association.

High tech director Dale Youngs and investigator David Finch will offer four hours of POST-certified legal and technical training in computer crimes. Their presentations will be from 1:30-5:30 p.m. Sept. 24 and 25.

To register for these classes or the conference, call the association at 573-634-2270.

Federal courts increase scrutiny over police disciplinary cases

THE 8th CIRCUIT COURT of Appeals issued an opinion on April 16 that greatly expands the ability of the federal courts to review the disciplinary decisions of law enforcement agencies.

In *Moran v. Clark*, the 8th Circuit ruled that a demoted police officer could sue over his termination even though his department held a hearing that provided sufficient procedural due process. The court said the officer's 14th Amendment right to substantive due process was denied because the actions of the department "shocked the conscience."

The case arose from the beating of a mentally handicapped suspect. The officer arrived after the suspect had been subdued with batons and Mace. The alleged assault immediately received a lot of publicity and, according to the officer, the department began to look for a "scapegoat."

The officer, indicted by a grand jury for the assault, was acquitted at trial.

The department then suspended and demoted the officer.

Although the discipline was later affirmed by a circuit court and state appeals court, the officer filed a federal civil rights suit. He claimed the department actions were "so wrongful as to shock the conscience" because they set out to make him the scapegoat and ignored evidence that he did not assault the suspect.

The 8th Circuit decision does not conclude that the department violated the officer's constitutional rights, but does conclude that he is entitled to proceed with his substantive due process claim.

The case is important because it allows an officer to attack the validity of his discipline after he already has challenged the propriety of that discipline in state court. In most cases, once an officer has had the opportunity to challenge his discipline by appealing to a state court, the law generally forbids that officer from filing further lawsuits.

Substantive due process claims appear to have become a new way plaintiffs can bring federal civil rights claims or issues that federal courts have historically refused to pursue. Just last year, Front Line reported that the 8th Circuit permitted a police pursuit claim to proceed as a civil rights violation under this same claim of substantive due process.

Because a substantive due process violation arises when an officer is accused of conduct that "offends judicial notions of fairness," critics have suggested that these claims allow courts to second-guess any decision made by an officer.

Thus, even though a state appeals court determined the officer had a fair hearing and was guilty of misconduct, the officer will have a second chance to prove he was set up by his department and was improperly accused of misconduct. It is likely that agencies will begin to see a number of similar claims.

Execution date set for killer of state trooper

THE MISSOURI SUPREME Court set an execution date of July 11 for Jerome Mallett, who killed state trooper James Froemdsorf in Perry County.

The trooper had stopped Mallett for speeding on Interstate 55 on March 2, 1985. Mallett slipped off his handcuffs while in custody in the patrol car and shot Froemdsorf with the trooper's service weapon.

Mallett confessed to the killing and was convicted of first-degree murder by a jury in Schuyler County.

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U.S. Supreme Court ruling clarifies Sixth Amendment right to counsel

THE U.S. SUPREME COURT issued an April 2 ruling that helps clarify when police may question a suspect already represented by a lawyer. This uncertainty exists because of two constitutional rights: the Fifth Amendment right to remain silent and the Sixth Amendment right to counsel.

The court clearly indicated that the right to counsel is an “offense-specific” right not applicable to uncharged crimes. When speaking to a suspect about uncharged crimes, police must still obtain a *Miranda* waiver under the Fifth Amendment, but not a Sixth Amendment waiver of right to counsel.

In *Texas v. Cobb*, Raymond Levi Cobb was arrested for a burglary. The occupants of the home were missing,

and foul play was suspected. The court appointed an attorney to represent Cobb on the burglary charge. When police learned Cobb also may have murdered the occupants, they Mirandized him and Cobb confessed.

Cobb argued that because the murders were associated with the burglary, and because he had a lawyer to represent him on the burglary, police could not question him without getting a waiver of his right to counsel.

The Supreme Court held that the confession was admissible and that the police did not need a Sixth Amendment waiver. The attorney was only appointed to represent Cobb in the burglary case and the Sixth Amendment is crime specific.

The Fifth Amendment is **not** crime specific. Once a suspect invokes his right to remain silent he cannot be questioned about any crime — charged or uncharged. But the right to counsel applies only to charges formally filed.

When counsel has been appointed for a specific offense, the police and prosecutor are required to deal with the defendant through the lawyer. The only exception is when the suspect initiates communication with police. *Michigan v. Jackson*, 475 U.S. 625, 633 (1986). But even then, officers should consult with the prosecutor about the proper way to obtain an express waiver of the Sixth Amendment, in addition to *Miranda* warnings.

Top court approves arrests for minor offenses

THE U.S. SUPREME COURT on April 25 upheld the right of police officers to make warrantless arrests for minor law violations, including infractions.

While some argue that recent concerns over racial profiling would make it unwise to give officers such broad discretion, the Supreme Court in a 5-4 decision concluded that allowing officers to make custodial arrests for minor violations does not violate the Fourth Amendment’s prohibition against unreasonable seizures.

The case arose from a civil rights lawsuit filed by motorist Gail Atwater. She was stopped by a local Texas officer because she and her two young children were not wearing seatbelts. Atwater had no identification, claiming her purse was stolen the

previous day.

Atwater was handcuffed and arrested. After posting a \$310 bond, she later pleaded guilty to the seatbelt charge and was fined \$50. She then sued the officer and his department, claiming the arrest was unconstitutional. Like Missouri, Texas has no provision for jail time for seatbelt violations.

The Supreme Court’s decision, therefore, allows officers to make arrests for any offense, provided state law permits the arrest for that offense. In Missouri, Section 544.216, RSMo, expressly allows certified peace officers to arrest for all criminal offenses, including misdemeanors.

Once a custodial arrest has been made, the law allows an officer to thoroughly search the defendant and

the vehicle’s interior.

While the Supreme Court, and Missouri law, gives an officer the discretion to decide whether to issue a citation or make a custodial arrest, officers should remember that this discretion should be tempered by avoiding the use of race or sex in exercising that discretion. Deciding to make a custodial arrest and a search, based on the race of the motorist is not proper nor acceptable and may violate the motorist’s 14th Amendment right to equal protection.

Also, Missouri law still prohibits an officer from stopping a motorist to determine compliance with the seatbelt laws, Section 307.178, RSMo. The Supreme Court’s opinion does not alter that limitation on an officer’s ability to make such a stop.

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RACIAL PROFILING

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which can affect the driving demographics in a community.

“While data alone cannot prove racial profiling, the data collected in this initial study have done nothing to disprove the perception of racial profiling,” Nixon said.

However, he noted that the level of disparity in the data, combined with the anecdotal reports about stops of many law-abiding citizens, “leads me to believe that African Americans and Hispanics have in certain instances been the target of racial profiling. We in law enforcement must recognize this as a problem and

work to do better,” Nixon said.

He commended the law enforcement representatives on the statewide advisory committee.

“Law enforcement made a real difference in bringing together this group of people from various walks of life who did not always see eye to eye,” Nixon said. “The actions of these committee members helped build trust, and that is what is needed if we are to continue our success in fighting crime.”

Law enforcement representatives on the committee are:

- Lee’s Summit Police Chief **Ken Conlee**, president of Missouri Police Chiefs Association
- **Russ Craven**, president of Union of

Law Enforcement Local 57

- Officer **Joan Glover**, St. Louis Chapter of National Black Police Officers Association
- Johnson County Sheriff **Charles Heiss**
- **Daniel Hernandez**, Latino Peace Officers Association
- **Thomas Mayer**, president of Fraternal Order of Police
- St. Peters Police Chief **Ron Neubauer**
- Kansas City Police Col. **Jim Nunn** (retired)
- **Marco Tapia**, executive director, Missouri Deputy Sheriffs’ Association
- Pagedale Police Chief **Tyrone Thompson**
- Highway Patrol Lt. **Juan Villanueva**